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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

CUONG MINH LE,

Defendant and Appellant.

B296026

(Los Angeles County
Super. Ct. No. GA033230-02)

APPEAL from a judgment of the Superior Court of Los Angeles County, William C. Ryan, Judge. Affirmed.

Richard B. Lennon, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance by Plaintiff and Respondent.

In 1997, the Los Angeles County District Attorney charged defendant Cuong Le (defendant) with possession of a firearm by a felon and carrying a loaded firearm in public. The charges were predicated on evidence defendant fled from a car in a restaurant parking lot while another individual was detained by the police, and officers, after giving chase, found a loaded .357 magnum handgun on the ground along the route defendant had been running and .357 cartridges in the car from which defendant fled. (*People v. Le* (Jan. 14, 1999, B118892) [nonpub. opn.]; *People v. Le* (Jun. 17, 2016, B267422) [nonpub. opn.])

The jury found defendant guilty of both charged firearm offenses and found true an allegation that he had suffered two prior felony convictions within the meaning of the Three Strikes law (Pen. Code, §§ 667(b)-(i), 1170.12).¹ The trial court imposed a sentence of 25 years to life, and this court affirmed defendant's conviction and sentence on appeal. (*People v. Le* (Jan. 14, 1999, B118892) [nonpub. opn.])

In March 2013, defendant filed a petition to recall his sentence under section 1170.126, which was enacted in 2012 as part of Proposition 36, the Three Strikes Reform Act. The trial court denied the petition, finding defendant ineligible for resentencing because he was armed with a firearm during the commission of the offenses. Defendant appealed, and we affirmed. (*People v. Le* (Jun. 17, 2016, B267422) [nonpub. opn.])

Our Supreme Court subsequently decided *People v. Frierson* (2017) 4 Cal.5th 225, in which it held the factors

¹ Undesignated statutory references that follow are to the Penal Code.

rendering a defendant ineligible for recall of sentence under Proposition 36 must be proven beyond a reasonable doubt.

Defendant filed a second petition for recall of sentence in September 2018, contending it was properly filed because he had not had the opportunity to raise the issue of whether the trial court applied the correct legal standard in determining he was ineligible for resentencing. The trial court denied the petition again, this time “find[ing] beyond a reasonable doubt that the petitioner is statutorily ineligible for recall and resentencing pursuant to Penal Code section 1170.126 because he was armed with a firearm.” Defendant noticed this appeal from that order.

We appointed counsel to represent defendant. After examining the record, counsel filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 that raises no issues. On June 10, 2019, this court advised defendant he had 30 days to personally submit any contentions or issues he wished us to consider. We received no response.

We have examined the record and are satisfied defendant’s attorney on appeal has complied with the responsibilities of counsel and no arguable issue exists. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-82; *People v. Kelly* (2006) 40 Cal.4th 106, 122-24; *Wende*, 25 Cal.3d at 441.)

DISPOSITION

The order denying defendant's section 1170.126 petition is affirmed.

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BAKER, J.

We concur:

RUBIN, P. J.

MOOR, J.